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In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1946.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court of Appeals For the Seventh Circuit.

May it Please the Court:

The petitioners herein are the Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926; Brotherhood of Railroad Trainmen, Local Lodge No. 27; Order of Railroad Telegraphers; Brotherhood of Railway Signalmen of America, Local No. 163; Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, Local Lodge No. 908; American Train Dispatchers Association; Brotherhood of Maintenance of Way Employees, Local Lodge No. 1141; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America, Local Lodge No. 360; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Sheet Metal Workers; International Brotherhood of Firemen, Oilers and Shop Laborers; F. O. Fisher; Robert R. Reed; Fred

Sauers, Jr.; E. D. Nevens; A. N. Murphy; W. C. Keiser, and B. M. Jewell.

The respondents herein are the Toledo, Peoria & Western Railroad, a corporation; Farmers Grain Company, a corporation; Eli Leman and E. J. Schiltz, d.b.a. Corn Belt Elevator; Ben C. Taber and E. C. Taber, d.b.a. Taber Lumber Co.; W. Howard Oaks, d.b.a. Oaks & Sons; E. F. Kent, Bessie Kent, Paul Kent, Lee Kent, Helen Kent and O. M. Lyon, d.b.a. Kent Lumber & Coal Co.; Gridley Farm Tool Co., Inc., a corporation; Sam R. Honegger, Frank Honegger and Ben A. Roth, d.b.a. Honeggers' & Co.; Wilber H. Boies and Henry Blessman, d.b.a. Boies & Blessman; Secor Elevator Company; El Paso Elevator Company, a corporation; Western Grain Company, a corporation; Meadows Grain & Coal Company, a corporation; C. W. Parry, d.b.a. C. W. Parry & Son, and Louis Shulman, d.b.a. Fairbury Iron and Metal Company.

The petitioners pray that a writ of certiorari issue to review the judgment and decree of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above entitled cause, designated therein as No. 9114, reversing the decree of the District Court of the United States for the Southern District of Illinois, Northern Division (which appointed a receiver to operate the respondent railroad), and directing that a mandatory injunction issue requiring the railroad to provide transportation services to the respondent shippers, and that a supplementary injunction issue against the railroad's employees, these petitioners as their representatives, and others.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 158 F. 2d —, and may be found in the record at pp. ..... The findings of fact and conclusions of law, and the supplemental opinion, of the District Court are reported in 66 F. Supp. 845, and

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may also be found in the record at pp. ... and ..., respectively.

JURISDICTION.

The opinion and judgment or decree of the Circuit Court of Appeals were entered on November 20, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347).

STATEMENT.

This proceeding developed from a labor dispute which began early in 1941. (Finding par. 13, R. ....) A knowledge of certain of the historical developments in this dispute is essential to an understanding of the issues involved in this petition.

In October, 1940, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen were certified as the representatives of the enginemen and trainmen employees, respectively, of the respondent railroad (sometimes hereinafter referred to as the "TP&W"). Throughout the whole of this labor dispute the TP&W has been controlled and dominated in all respects by George P. McNear, Jr. (Finding par. 2, R. ....) From late 1940 to November, 1941, the Brotherhoods and the TP&W were unable to agree on rates of pay and working conditions. Following the commencement of war, the enginemen and trainmen abandoned a previous determination to strike, and agreed with the National Mediation Board to submit the dispute to arbitration. The TP&W refused arbitration, and then served notice that on December 29, 1941, its own proposed rates of pay and working conditions would go into effect. The enginemen and trainmen withdrew from service on December 28, 1941. (Finding par. 4, R. .....)

On January 3, 1942, the TP&W instituted an action in the District Court of the United States for the Southern

District of Illinois, Northern Division, for an injunction against its striking employees. This action ended with the decision of this Court in *Brotherhood of Railroad Trainmen v. TP&W RR.*, 321 U. S. 50, to the effect that the TP&W was not entitled to an injunction because it had not availed itself of every reasonable effort to settle the dispute. Despite urgent personal requests from the President of the United States and by the National War Labor Board, the TP&W refused to arbitrate, and on March 16, 1942, the President, by Executive Order, placed the TP&W under the management of the Office of Defense Transportation. (Finding par. 6, R. .....)

During government management, the rates of pay and working conditions put into effect on the TP&W were substantially the same as were in effect on the other railroads of the country. (Finding par. 8, R. .....) Eleven of the petitioning Brotherhoods, together with the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, became the designated representatives of all of the TP&W's crafts or classes of employees. During government management (March 22, 1942 to October 1, 1945) the TP&W's net operating profit was $7,650,000. (Finding par. 8, R. .....) The TP&W owns and operates 239 miles of railroad.

The government announced on September 6, 1945, that the TP&W was to be returned to private management. The Brotherhoods thereupon sent to George P. McNear, Jr., a letter requesting that he confer with them for the purpose of discussing the continuance of the rates of pay and working conditions then in effect. McNear responded by letter dated September 15, 1946, stating it would not be proper for the TP&W to make an agreement with the Brotherhoods, or for him to meet with them. (Finding, par. 9, R. .....) The employees voted to withdraw from service effective October 1, 1945. On September 28, 1945, the TP&W sent an attorney with certain proposals to the Brotherhoods,

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which were rejected. The employees withdrew from service on October 1, 1945, and with that act the carrier virtually ceased all transportation service. (Finding par. 9, R. ....) Efforts of the parties to compose their differences have not been successful, and the strike continues.

On February 20, 1946, a complaint was filed in the District Court of the United States for the Southern District of Illinois, Northern Division, by certain shippers situated along the line of the TP&W, against the TP&W and these thirteen Brotherhood petitioners with seven of their officers. The complaint alleged that the TP&W was failing to provide transportation and car service, and had abandoned the operation of its line, contrary to the Interstate Commerce Act. It prayed for appropriate equitable relief to compel resumption of transportation service, specifically asking that the District Court appoint a receiver to take possession of said carrier and re-establish its transportation service.

Thereafter, the TP&W filed an unverified cross-complaint against these petitioners, praying for an injunction against them and their members to restrain them from interfering with the operation of the TP&W. On June 6, 1946, the District Court entered its judgment dismissing the cross-complaint against petitioners and appointing a receiver to operate the TP&W. (R. .....)

The District Court found as a fact "that one of the principal reasons for the failure of defendant Railroad to operate its trains and provide rail service since October 1, 1945 has been that the Railroad did not have in its employ a sufficient force of trained and experienced Railroad workers to operate said trains and man its equipment, and that such insufficiency of workers was the result of the Railroad's unreasonable refusal in September, 1945 to meet the defendant Brotherhoods, and bona fidely engage in collective bargaining and that such insufficient force of workmen was also the result of the unreasonable and obstinate

attitudes of all defendants and their refusal to make concessions and their failure to genuinely negotiate and bargain for the joint welfare of the employees, the Railroad Corporation and the public." (Finding par. 11, R. .....)

The TP&W took an appeal to the Circuit Court of Appeals for the Seventh Circuit, and on September 4, 1946, that court entered its judgment reversing the judgment of the District Court both as to the appointment of the receiver and as to the dismissal of the cross-complaint. It remanded the case with directions to grant the injunctive relief prayed for by the TP&W in its cross-complaint against any interference with its operation by the employees or others. (R. ....)

Petitions for rehearing were filed by both the shippers and the TP&W, and on rehearing the Circuit Court of Appeals filed, on November 20, 1946, a new opinion in the case (Circuit Judge Major concurring in part and dissenting in part), vacating its judgment entered September 4, 1946. The judgment entered November 20, 1946, ordered the District Court to discharge the receiver, issue a mandatory injunction requiring the TP&W to provide transportation service, and issue supplementary injunctions restraining the employees, their representatives and others from interfering with operations of the TP&W while complying with the mandatory injunction. (R. ....)

The Circuit Court of Appeals' mandate issued November 27, 1946. The TP&W thereupon moved to dismiss its cross-complaint, and the motion was allowed by the District Court. On December 5, 1946, the District Court issued its mandatory injunction ordering the TP&W to provide transportation service, and also issued a sweeping supplementary injunction against all interference with the operation of the TP&W. (R. ....) The complaint upon which these mandatory and supplementary injunctions are predicated does not conform to the requirements of the Norris-La Guardia Act, nor have requisite findings of fact been made and other requirements of the Norris-LaGuardia Act

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conditioning the right of the federal courts to issue injunctions against employees and their representatives been complied with.

STATUTES INVOLVED.

This case involves the construction of the Interstate Commerce Act (49 U. S. C., Secs. 1 *et seq.*), the Norris-LaGuardia Act (Act of March 23, 1932, C. 90, 47 Stat. 70; 29 U. S. C., Secs. 101, *et seq.*), and the Railway Labor Act (Act of May 20, 1926, C. 347, 44 Stat. 577; Act of June 21, 1934, C. 691, 48 Stat. 1185; 45 U. S. C., Secs. 151 *et seq.*).

Pertinent sections of the Norris-LaGuardia Act, Railway Labor Act, and Interstate Commerce Act are set forth in the Appendix.

QUESTIONS PRESENTED.

1. When a railroad subject to the Interstate Commerce Act ceases to furnish transportation and car service because of a labor dispute which has led to a strike of the railroad's employees, may a court of the United States enjoin the railroad to cease the abandonment of its operation and provide transportation service in compliance with Secs. 1 (4), 1 (11) and 1 (18) of the Interstate Commerce Act?

2. May the court supplement its mandatory injunction directed to the railroad, by sweeping injunctions against the railroad's employees, their representatives and others, forbidding all forms of interference with the operation of the railroad, including its interchange services with connecting carriers, without observing and complying with the Norris-LaGuardia Act, or in violation of that Act, in the following particulars, to-wit:

(a) Without due and personal notice of the hearing on said injunctions having first been given, in a manner directed by the court, to the chiefs of those public officials of the counties and cities within which

the unlawful acts complained of have been threatened or committed, charged with the duty to protect complainant's property, as required by Section 7 of said Act.

(b) Without the plaintiffs expressly complaining of and setting forth in their bill of complaint the specific acts which the railroad's employees, their representatives and others, have been enjoined from engaging in, as required by Section 9 of said Act.

(c) Without the court finding as a fact that the railroad's employees, their representatives and others, have committed the unlawful acts which have been enjoined, as required by Section 9 of said Act.

(d) Without a finding of fact made by the court that as to each item of relief granted greater injury will be inflicted upon plaintiffs by the denial of relief than will be inflicted upon the railroad's employees and their representatives by the granting of relief, as required by Section 7 (c) of said Act.

(e) Without a finding of fact made by the court that complainants have no adequate remedy at law, as required by Section 7 (d) of said Act.

(f) Without a finding of fact made by the court that the public officers charged with the duty of protecting complainants' property are unable or unwilling to furnish adequate protection, as required by Section 7 (e) of said Act.

REASONS FOR GRANTING THE WRIT.

1. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

2. The Circuit Court of Appeals has decided a federal question in conflict with the decision of this Court in *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515.

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3. The Circuit Court of Appeals has assumed jurisdiction denied to it by the Norris-LaGuardia Act, and by the decision of this Court in *Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products, Inc.*, 311 U. S. 91.

Argument in support of these reasons is contained in our brief, *post*.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted to review the judgment of the Court below.

Louis F. Knoblock

Harold S. Heiss

Russell B. Day

Attorneys for Petitioners.

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In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1946

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

OPINIONS BELOW.

The references to the opinions of the Circuit Court of Appeals and the District Court are set forth in the petition at page 2.

JURISDICTION.

The grounds on which the jurisdiction of this Court is invoked are stated in the petition.

STATEMENT.

A statement of the case has been set forth in the petition and, in the interest of brevity, is not repeated here.

SPECIFICATIONS OF ERRORS INTENDED TO BE URGED.

The Circuit Court of Appeals erred:

(1) In holding that the respondent shippers were entitled to a mandatory injunction directed to the respondent railroad requiring it to furnish transportation service to the shippers.

(2) In failing to hold that a cessation of transportation service, following a strike of the railroad's employees, caused by the inability of the railroad and its employees to agree upon wages, rules and working conditions, is not a violation of the Interstate Commerce Act.

(3) In failing to hold that the respondent shippers' complaint involved or grew out of a labor dispute and that, in consequence, the jurisdictional limitations and conditions imposed by the Norris-LaGuardia Act must be observed before injunctive relief may be granted the shippers.

(4) In holding that the mandatory injunction directed to the respondent railroad should be supplemented by an injunction forbidding all manner of interference with the operation of the respondent Railroad.

ARGUMENT.

The argument herein presented is not addressed to the merits of the case, discussion of the merits being reserved for petitioners' brief in the event the writ is allowed, but is directed to the support of the reasons for granting the writ.

1. **The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.**
2. **The Circuit Court of Appeals has decided a federal question in conflict with the decision of this Court in Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515.**

The important federal question involved in the decision of the Circuit Court of Appeals may be stated thus: Are the rights of shippers to the transportation services which the Interstate Commerce Act requires railroads to furnish, superior to the right of railroads and their employees to bargain over wages, rules and working conditions, which includes the right to allow a strike and cessa-

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tion of transportation service to develop in the event the bargaining results in disagreement?

Section 1 (4) of the Interstate Commerce Act (49 U. S. C. § 1(4)) imposes upon carriers the "duty * * * to provide and furnish * * * transportation upon reasonable request therefor, * * *."

Section 1 (11) of the Act (49 U. S. C. § 1(11)) imposes upon carriers the "duty * * * to furnish safe and adequate car service * * *."

Section 1 (18) of the Act (49 U. S. C. § 1(18)) forbids carriers to "abandon all or any portion of a line of railroad, or the operation thereof, * * *" without authorization from the Interstate Commerce Commission. And Section 1(20) (49 U. S. C. § 1(20)) authorizes any court of competent jurisdiction to enjoin an abandonment of operations occurring without approval by the Commission.

The above statutes were added to the Interstate Commerce Act, or were last amended, by the Transportation Act of February 28, 1920 (C. 91, 41 Stat. 478).

Another law of presumably equal dignity and obligation to that of the Interstate Commerce Act, is the Railway Labor Act as amended (45 U. S. C., Secs. 151, *et seq.*). While the principal purpose of the Railway Labor Act is the avoidance of "any interruption to commerce or to the operation of any carrier engaged therein," (Sec. 2(1)), nevertheless the essential scheme of the Act by which Congress hoped to achieve its declared purpose was adopted with express recognition of the right of management to disagree with its employees on the terms of employment, and of the right of employees to withdraw from service should they choose to do so as a result of such disagreement.

Section 2, First, of the Railway Labor Act provides, "It shall be the duty of all carriers, their officers, agents, and employees to exert *every reasonable effort* to make and

maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes * * *." Section 2, Second, further provides, "All disputes between a carrier or carriers and its or their employees shall be considered, and, *if possible*, decided, with all expedition, in conference between representatives designated and authorized so to confer, * * *."

The language of these statutes acknowledges that carriers and their employees may not be able to resolve their differences by agreement. But notwithstanding this acknowledgment of possible failure of the parties to agree, and the consequent interruption of the carrier's operations, the Act specifically disclaims a congressional purpose to compel agreement. Section 7, First, contains the proviso that "the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise." The right to strike is expressly preserved by the proviso in Section 2, Tenth, reading—"nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

Any doubt as to the meaning or significance of these provisos was put at rest by the decision of this Court in *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, in which the point is repeatedly emphasized that while the Railway Labor Act requires the carrier to "treat with" the representatives of its employees, it does not forbid the carrier to withhold its assent to the terms of employment sought by its employees.

Thus, on the one hand are the general provisions of the Interstate Commerce Act requiring all railroads to furnish

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transportation service to the public. On the other hand is the more lately enacted Railway Labor Act, which not only embraces collective bargaining between carriers and their employees as a national policy, but compels the establishment of wages, rules and working conditions in conformity with a statutory plan of bargaining procedure. The Circuit Court of Appeals has construed the general provisions of the Interstate Commerce Act as imposing an unqualified obligation upon railroads to provide transportation service. This construction substantially destroys a cardinal right which the Railway Labor Act has bestowed upon those subject to it.

For the railroads, it destroys the right to bargain collectively, including the privilege of refusing to agree to terms or conditions demanded of them by their employees, in all instances save those rare few when the railroad is able to secure enough strike-breaking employees to furnish the transportation service required of it by the public, notwithstanding the strike of its regular employees. In all other instances, the right to bargain will be a relatively hollow right because of the imminent threat of being compelled by injunction to provide the transportation services required of railroads by the Interstate Commerce Act.

For the employees, it destroys to a substantial degree the right to bargain and the right to strike, for the exercise of these rights would perforce be undertaken in the face of a court compelled by law to exercise to the full its strike-breaking power.

There is thus posed a question of federal law, the answer to which will have an important bearing upon the collective bargaining process as it is carried on throughout the railway industry, pursuant to the Railway Labor Act.

3. The Circuit Court of Appeals has assumed jurisdiction denied to it by the Norris-LaGuardia Act, and contrary to the decision of this Court in Milk Wagon Drivers' Union etc. v. Lake Valley Farm Products, 311 U. S. 91.

The mandate of the Circuit Court of Appeals required the District Court to issue a sweeping injunction against persons interfering with the operation of the respondent railroad. (R. .....) This action was beyond the jurisdiction of the Court for the reasons hereinafter set forth.[1]

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[1] The truly effective injunction resulting from the Circuit Court of Appeals' mandate is the supplementary injunction against the employees, not the mandatory injunction against the railroad. The latter orders the railroad to do what it is already desirous of doing, and has tried unsuccessfully to do, to-wit, to operate. The mandatory injunction will, moreover, be a vain exercise of the court's jurisdiction if the strike of the employees continues to be effective. The supplementary injunction is all-inclusive in its prohibitions against interference with the normal operation of the railroad, by all persons aware of its existence. It is, of course, axiomatic that the mandatory injunction can be effective only to the same degree as the supplementary injunction, enforced by the harassing process of contempt, succeeds as a strike-breaking weapon.

The terms of the supplementary injunction (originally issued by the District Court, after receipt of the mandate, on December 5, 1946, and modified by order of December 27, 1946) directed against the employees, are as follows:

> "II. That the Defendants herein other than Defendant Railroad, namely, Brotherhood of Locomotive Firemen and Enginemen, Local Lodge No. 926; Brotherhood of Railroad Trainmen, Local Lodge No. 27; Order of Railroad Telegraphers; Brotherhood of Railway Signalmen of America, Local No. 163; Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, Local Lodge No. 908; American Train Dispatchers Association; Brotherhood of Maintenance of Way Employees, Local Lodge No. 1141; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America, Local Lodge No. 360; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helper of America; International Brotherhood of Sheet Metal Workers; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; F. O. Fisher; Robert R. Reed; Fred Sauers, Jr.; E. S. Nevin; A. N. Murphy;

(*Continued on following page*)

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Section 9 of the Norris-LaGuardia Act reads as follows:

"No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibi-

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(*Continued from preceding page*)

W. C. Keiser; and B. M. Jewell, and all persons to whom knowledge of this Injunction or any Writ issued pursuant hereto shall come, be and each and all of them are hereby commanded, enjoined and restrained from:

(1) Assaulting or attempting to injure by violence or otherwise any employe or officer of Defendant Railroad, or any person or persons seeking or desiring to enter the employ of Defendant Railroad;

(2) Intimidating or attempting to intimidate by violence, force, assault, threat or coercion, of any kind, any employe or officer of Defendant Railroad, or any person or persons seeking or desiring to enter the employ of Defendant Railroad, to prevent such employe, officer, person or persons from working for, or seeking or entering the employ of, Defendant Railroad;

(3) Molesting or threatening in any way by violence, force, assault, threat or coercion, of any kind, any member of the family of any employe or officer of Defendant Railroad, or of any person or persons seeking or desiring to enter the employ of Defendant Railroad, or in any way damaging or attempting to damage the home, residence or personal property of any of said employes, officers, person or persons or their families;

(4) Assaulting or attempting to injure, by violence or otherwise, any employe or officer of any shipper of Defendant Railroad, or any employe or officer of any carrier connecting with Defendant Railroad, to prevent such shipper or carrier from shipping, receiving or delivering shipments via, or interchanging with, Defendant Railroad;

(5) Intimidating or attempting to intimidate by violence, force, assault, threat or coercion, of any kind, any employe or officer of any shipper of Defendant Railroad, or any employe or officer of any carrier connecting with De-

(*Continued on following page*)

tion of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in sections 101-115 of this title."

The instant case unquestionably "grew out of" a labor dispute. A "labor dispute" is defined by the Act as including "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment."

(*Continued from preceding page*)

fendant Railroad, to prevent such shipper or carrier from shipping, receiving, or delivering shipments via, or interchanging with, Defendant Railroad;

(6) Molesting or threatening in any way by violence, force, assault, threat or coercion, of any kind, any member of the family of any employe or officer of any shipper of Defendant Railroad, or any employe or officer of any carrier connecting with Defendant Railroad, or in any way damaging or attempting to damage the home, residence or personal property of any of said employes or officers or their families;

(7) Assaulting or attempting to injure by violence or otherwise, or intimidating or attempting to intimidate, or molesting, interrupting, preventing, obstructing, interfering with or threatening, in any way, by violence, force, assault, threat or coercion, of any kind, any person or persons lawfully passing to, upon or from the property of Defendant Railroad, or transacting business in any manner with Defendant Railroad;

(8) In any manner interrupting, preventing, obstructing or interfering with, or attempting to interrupt, prevent, obstruct or interfere with, by violence, force, assault, intimidation, threat or coercion, of any kind, the maintenance, operation or improvement of the properties of Defendant Railroad, the movement of any locomotive, car, train, or other equipment or vehicle, of Defendant Railroad, or the shipment, receipt, delivery or transportation of interstate or intrastate commerce by Defendant Railroad;

(9) In any manner interrupting, preventing, obstructing, or interfering with, or attempting to interrupt, prevent,

(*Continued on following page*)

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With respect to the subject of the dispute between the respondent railroad and its employees, the District Court made the following finding of fact:

"The pleadings and evidence show that this dispute between the two defendants arose sometime in the beginning of the year 1941. The contention of both parties arose by reason of wages and working conditions proposed by the Railroad Company which finally resulted in a strike and walkout of two of the Brotherhoods in 1941." (Finding, p. 13, R. ...)

The complaint of the shippers concerns their inability to obtain transportation service from the respondent rail-

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(*Continued from preceding page*)

obstruct or interfere with, by violence, force, assault, intimidation, threat or coercion, of any kind, the interchange of traffic between Defendant Railroad and any connecting carrier;

(10) Destroying, damaging, injuring, disarranging, or attempting to destroy, damage, injure or disarrange, in any way or manner, or by any means, any portion of the roadway, ballast, tie and track structure, switch, turnout or derail, bridge, telegraph or signal equipment, building, motive power, rolling stock, or any other equipment or structure used by Defendant Railroad;

(12) Singly, in groups, in combination or in conspiracy with each other or with any other person or persons, doing or attempting to do any of the acts herein prohibited;

"III. That all persons, firms or corporations whatsoever, to whom knowledge of this Injunction or any Writ issued pursuant hereto shall come, are hereby commanded, enjoined and restrained from interrupting, preventing, obstructing or interfering with, or attempting to interrupt, prevent, obstruct or interfere with, in any manner, the operation, maintenance or improvement by Defendant Railroad of its properties pursuant to this order;

"IV. That the Marshal of this Court is hereby authorized to employ such additional deputy marshals as may be necessary fully to carry out and enforce this order, the cost and expense of such additional deputy marshals to be borne as determined by the further order of this Court."

road, owing to the latter's engagement in a labor dispute with its employees.

The Act provides that a case "involves or grows out of a labor dispute" under the following circumstances, among others:

> "When used in this Act, and for the purposes of this Act—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; * * *" (Sec. 13 (a)).

This case does "involve persons" who are engaged in the same industry, to-wit, a railroad and its employees. Significantly, the Act does not read, "A case shall be held to involve or to grow out of a labor dispute *when the opposing parties* are engaged in the same industry, etc."

It may also fairly be said that this case "involves persons who are engaged in the same industry,—or *have direct or indirect interests therein.*" The respondent shippers have a "direct or indirect" interest in the railway industry, —in the operations of the respondent railway in particular. By their own admissions in the complaint, that interest is a vital one.

Proceeding upon the conclusion that the instant case "involves or grows out of a labor dispute," we return to observe the requirements of Section 9. The prohibitions which Section 9 permits a court to include in a restraining order or injunction are only "such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case."

The only active complaint in this proceeding upon which an injunction may be predicated is that filed by the respondent shippers, the railroad's cross-complaint having been dismissed at its request by permission of the District Court. (R. .....) The only allegations in the shippers'

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complaint pertaining to acts or conduct of the employees or their representatives are the following:

> "It is further averred that since October 1st, 1945 members of the defendant Brotherhoods have picketed the right of way of the defendant company. That State Police have been maintaining a guard and that on February 6th, 1946 two of such pickets were shot and killed and three other pickets were wounded by gunshot near Gridley, Illinois, arising out of the dispute between the defendant company and employees represented by other defendants." (Par. 9, R.....)
>
> "It is further averred that the resumption of the abandonment of interstate commerce and cessation of rail service October 1, 1945 by all defendants was the result of the refusal of the said George P. McNear, Jr., to meet and collectively bargain with representatives of employees in September, 1945 and the refusal of said McNear to recognize the other defendants as union representatives of the employers (sic) for collective bargaining. It is also alleged that such continued abandonment and cessation is also the result of the failure of defendant Brotherhoods and Unions since October 1st, 1945 to exert efforts to persuade said Mr. McNear to meet with them and collectively bargain." (Par. 12, R. .....)

Clearly these allegations in the complaint will not support, in the manner required by Section 9 of the Act, the sweeping injunction authorized by the Circuit Court of Appeals against the employees and these petitioners. These allegations are insufficient support for any form of prohibitory injunction against the employees and their representatives.

The judgment or decree of the Circuit Court of Appeals, and the injunctions issued pursuant thereto by the District Court, exceed the jurisdiction of these courts because they violate Section 7 of the Norris-LaGuardia Act. The pertinent portions of Section 7 read as follows:

> "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction

in any case involving or growing out of a labor dispute, as herein defined, * * * except after findings of fact by the court, to the effect—

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

Findings (c) and (d) have not been made by either the Circuit Court of Appeals or the District Court.

Regarding Finding (e), this Court stated in *Brotherhood of Railroad Trainmen v. TP&W RR, supra,* that "one major purpose of the (Norris-LaGuardia) Act was to prevent the use of injunction improperly as a strike breaking implement." The manifest purpose of limiting in this manner the jurisdiction of courts to issue injunctions is to prevent their use in all save those instances where it is demonstrated that the law enforcing agencies are unable to maintain peace between the parties involved in the labor dispute. On this subject, the District Court made the following finding:

"The Court finds from all the evidence, and the testimony of a number of Sheriffs, State Police Officers, Mayors and Chiefs of Police that the requests of all defendants conveyed to law enforcing officers were reasonably complied with, and that defendant Railroad's failure to operate was not justified by the Railroad's charge that public officials refused or were unable to perform their duty." (Finding, par. 10, R. . . .)

The Circuit Court of Appeals did not disturb this finding.

Section 7 is further violated in another respect. It provides that hearings on complaints in which temporary or permanent injunctions are sought "shall be held after

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due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property."

No form of notice of the hearing in the District Court was given by the shippers, or was directed by the District Court to be given, to the public officials contemplated by the foregoing provision, other than that certain law enforcement officials were summoned to testify as witnesses.

The mandatory and supplementary injunctions in their totality exceed in viciousness the labor injunctions the evils attendant with whose issuance induced passage of the Norris-LaGuardia Act. As strike-breaking implements they operate to the benefit of the TP&W, which stands in the posture of having pursued an obstinate, unreasonable and provocative policy in its labor relations (Conclusions of Law, par. 7). The affording of any injunctive relief to a litigant under such conditions violates not only established equitable principles but the policy defined in Sections 1 and 2 of the Norris-LaGuardia Act.

The fact that the activities of employees against whom an injunction is sought amount to a violation of some federal right of the plaintiffs, is no justification for the issuance of an injunction in violation of the Norris-LaGuardia Act. This Court has so held in the case of *Milk Wagon Drivers' Union, etc., v. Lake Valley Farm Products, Inc., supra,* in which was reversed a decision of the Circuit Court of Appeals for the Seventh Circuit, which had authorized injunctions, without regard for the Norris-LaGuardia Act, against persons picketing the plaintiff's dairy stores, on the justification that the defendants' activities constituted a secondary boycott in violation of the Sherman Anti-Trust Act. The situation in this case and the instant case are substantially parallel.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be issued.

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APPENDIX.

Sections 1, 2 and 7, First, of the Railway Labor Act of May 20, 1926, C. 347, 44 Stat. 577, as amended June 21, 1934, C. 691, 48 Stat. 1185, 45 U. S. C., Secs. 151-163.

DEFINITIONS.

SECTION 1. When used in this Act and for the purposes of this Act—

First: The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory,

or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the District Court of the United States for the District of Columbia; and the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia.

This Act may be cited as the "Railway Labor Act."

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"GENERAL PURPOSES.

"Sec. 2, (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES.

"Sec. 2, First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representa-

tives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers, or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative

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or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representa-

tive so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000, nor more than $20,000, or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an il-

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legal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Sections 1, 2, 4, 5, 7, 8, 9 and 13 of the Norris-LaGuardia Act, of March 23, 1932, C. 90, 47 Stat. 70, 29 U. S. C., Secs. 101-115, inc.

SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this Act, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his

fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

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(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make

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every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

Sections 1(4), 1(11), 1(18) and 1(20) of the Interstate Commerce Act (49 U. S. C. § 1 *et seq.*).

"Par. (4). It shall be the duty of every common carrier subject to this chapter engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this chapter participating therein which shall not unduly prefer or prejudice any of such participating carriers.

"Par. (11). It shall be the duty of every carrier by railroad subject to this chapter to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

"Par. (18). No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under

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this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment.

"Par. (20). The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both."